

HHS. 1012 May 1990



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** EAP Consultants

**File:** B-238103

**Date:** April 4, 1990

Hubert J. Bell, Jr., Esq., Smith, Currie & Hancock, for the protester.

James F. Trickett, Department of Health & Human Services, for the agency.

Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that proposal was improperly rejected is denied where review of agency's technical evaluation, which concluded that protester's proposal was technically unacceptable, shows that evaluation was reasonable and consistent with solicitation's evaluation scheme.

2. Cancellation of request for proposals set aside for small business and resolicitation on unrestricted basis are proper where all small business proposals are found technically unacceptable.

### DECISION

EAP Consultants protests the determination that its proposal was technically unacceptable under request for proposals (RFP) No. HHS-DAS-90-01, a total small business set-aside, issued by the Department of Health & Human Services (HHS) for the furnishing of mental health counseling services for approximately 27,000 employees of participating federal agencies principally located in Arkansas, Louisiana, Oklahoma, New Mexico and Texas. The protester also challenges the agency's cancellation of the RFP and resolicitation of the requirement, RFP No. HHS-DAS-90-02, which requests offers on an unrestricted basis.

We deny the protest.

048244/141093

The initial solicitation, issued October 17, 1989, was set aside for small business concerns; it contemplated a firm, fixed-price contract for specified counseling services for 1 year, January 1 through December 31, 1990, with a 1-year option. The RFP called for the submission of separate technical and price proposals and instructed offerors that technical excellence was the paramount consideration, while price proposals were to be reviewed for cost reasonableness. The RFP included a statement of work that described approximately 15 specific tasks to be performed and programs to be provided by the contractor, involving employee orientation and informational/outreach activities, supervisor training and consultation, counseling and referral services, reporting, quality assurance, staffing and program accessibility. The RFP emphasized that each offeror's technical proposal must include a detailed work plan describing how each aspect of the statement of work would be accomplished. For evaluation purposes, the solicitation listed the following major evaluation factors: (1) delivery of service and enhancement of utilization; (2) qualifications of staff; and (3) accessibility of counselors.

HHS received proposals from the protester and three other small businesses by the November 21 closing date. A three-member Technical Evaluation Panel (TEP) evaluated the technical proposals and found them technically unacceptable. The TEP prepared a report for the contracting officer giving the numerical score and a narrative evaluation with strengths and weaknesses for each proposal. The TEP awarded the protester 37 points out of the possible 100 points, which was mid range among the scores received by the other offerors. The contracting officer reviewed and accepted the TEP's findings; consequently, he determined that no competitive range would be established and no discussions would be held since all proposals were technically unacceptable. By letter of December 6, all offerors were advised that the RFP would be canceled and that an unrestricted solicitation would be issued. The new solicitation was issued on December 15. EAP Consultants filed its protest with our Office on December 20.

EAP Consultants challenges the determination of the TEP that its proposal was technically unacceptable, and contends that the contracting officer abused his discretion by failing to independently review the evaluation report and exercise his own judgment as to the technical acceptability of the proposals. Additionally, EAP Consultants protests the agency's cancellation of the RFP, and its resolicitation on an unrestricted basis.

HHS asserts that EAP Consultants' proposal was properly determined to be technically unacceptable. The agency states that this determination rests primarily upon the TEP's findings that the protester's proposal merely reiterated much of the RFP's statement of work, contrary to RFP instructions, and generally lacked sufficient detail, particularly as to how the firm proposed to enhance utilization of the counseling services and meet the needs of each site to be serviced. The agency also states that the EAP Consultants proposal was judged weak in failing to propose a sufficient quality assurance program and in failing to adequately provide for the required accessibility by the vast employee population targeted for use of the services.

The contracting officer explains, contrary to the protester's contentions, that he accepted the TEP's findings regarding EAP Consultants' proposal only after he conducted a lengthy review of the panel's technical unacceptability determinations for all four proposals. The contracting officer reports that since he did not object to the TEP's findings in any way that would significantly affect the offerors' scores, he agreed that each of the proposals was technically unacceptable and unable to be made technically acceptable without major revision. Having then determined that there was no reasonable expectation of receiving at least two small business offers meeting the agency's requirements, he canceled the RFP and resolicited the requirement on an unrestricted basis.

In reviewing protests concerning the evaluation of proposals and the resulting determination of whether a proposal is in the competitive range, we will examine an agency's evaluation to ensure that it has a reasonable basis. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 CPD ¶ 708. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Rice Servs., B-218001.2, Apr. 8, 1985, 85-1 CPD ¶ 400.

Here, as we have already indicated, the RFP called for a detailed and complete technical proposal which was required to precisely address how the contractor proposed to meet the objectives of each task listed under the solicitation's statement of work. We have reviewed the protester's proposal and the evaluation findings. The record provides reasonable support for the agency's conclusion that, at times, the protester's proposal merely reiterates the RFP's language regarding each task to be accomplished, and, at other times, only gives a blanket statement of compliance, without providing the required description of the programs

to be conducted. In particular, the record shows that this is especially true regarding the offeror's proposed plan to enhance utilization of the services, which was emphasized as an area of prime concern to the agency in the RFP. In this area, the protester's proposal states that it will comply with the stated minimal requirements for employee orientation and outreach activities (i.e., the number of informational flyers, cards and other materials to be distributed), but other than meeting the basic publicity requirements, it does not explain the individual utilization program EAP Consultants plans to follow.

Lack of sufficient detail also weakened the protester's proposal in describing how it planned to meet the particular needs of the many ethnic groups in the area, as well as any overall quality assurance plan it proposed to put into effect. Although the proposal has some recognizable strengths, as in the areas of management consultants, training sessions and providing counseling services to one ethnic group, the region's Native American population, the protester's proposal in most other areas provides only statements of compliance (e.g., including only a generally stated plan to recruit counselors to match the ethnic population to be serviced, without explaining its proposed recruitment plan). We cannot find that these general statements of compliance were sufficient to comply with the solicitation's requirement for specific information which the agency deems necessary for evaluating the technical acceptability of proposals. See Data Controls/North Inc., B-233628.4, Apr. 5, 1989, 89-1 CPD ¶ 354.

In view of EAP Consultants' failure to furnish sufficient information in its proposal, we find the TEP acted reasonably in concluding that the protester's proposal was technically unacceptable. Additionally, we find that the contracting officer exercised his independent judgment in rejecting the proposal.

Finally, because we find the agency's evaluation of the protester's proposal reasonable, and because none of the other proposals was found technically acceptable, we find nothing improper in the cancellation of the RFP and subsequent resolicitation. As we pointed out in our decision in Mnemonics, Inc., B-226309.2, May 1, 1987, 87-1 CPD ¶ 462, Federal Acquisition Regulation § 19-502.2 (FAC 84-40) directs the setting aside of procurements if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns. Here, the contracting officer determined that there was no such reasonable expectation because no other acceptable small

business proposals were received under the original solicitation.<sup>1/</sup> Consequently, we find nothing improper in the resolicitation on an unrestricted basis.

The protest is denied. In view of our resolution of the protest, EAP Consultants' claim for costs is also denied. See Hydroscience, Inc., B-227989 et al., Nov. 23, 1987, 87-2 CPD ¶ 501.

*for Robert P. Hinchman*  
James F. Hinchman  
General Counsel

---

<sup>1/</sup> EAP Consultants also states for the first time in its February 8, 1990, comments in response to the agency's report, that the agency's initial synopsis of the procurement in the Commerce Business Daily on October 5, 1989, was defective because it did not state that the procurement was set aside for small business concerns. Despite the defect in the synopsis, we find, based on this record, that the agency solicited proposals from at least 27 small business firms and still failed to get even one acceptable proposal. Under the circumstances, the agency's determination that it had no reasonable expectation of receiving two acceptable proposals from small business firms for the resolicitation has not been shown to be unreasonable.